

California Regional Water Quality Control Board
Santa Ana Region

June 1, 2001

ITEM: 22

SUBJECT: Executive Officer's Report

DISCUSSION:

1. Review of Regional Board National Pollutant Discharge Elimination System (NPDES) Program by U.S. EPA – During April 2000, the U.S. EPA (EPA) conducted a review of the Santa Ana Regional Board's NPDES program. The Santa Ana Region was the fourth regional board to have its program reviewed by EPA. Copies of the review have been forwarded to all Board Members. A perusal of the EPA report will show that the EPA evaluation of the Santa Ana Regional Board's NPDES program is generally quite positive. Prior to the review, staff believed that the Santa Ana Region was implementing an effective NPDES program, and we believe the NPDES program review substantiates that position. There were no glaring program deficiencies found by EPA, and we believe that the EPA recommendations were relatively minor and generally procedural. EPA comments included a recommendation that our staff send copies of our inspection reports back to the inspected facilities and that standardized checklists should be developed. EPA also took the position that the region did not do enough enforcement in response to violations of NPDES program requirements. They expressed concern with the manner in which ACL penalty amounts had been determined in the past and the instances where the region lowered penalty amounts, in some cases, following negotiations (although this is not unprecedented for EPA), and they also objected to the instances in which the region suspended portions of ACL assessments in exchange for compliance projects on the facility subject to the ACL. EPA also expressed the need for the region to eliminate the backlog of major NPDES permit renewals.

We will prepare a response to the Santa Ana Region NPDES program review and transmit that response to EPA. We have also posted the program review on our web site where any interested persons will have access to it.

2. Pesticide Application Cleanup and Abatement Order – On May 7, 2001, we issued Cleanup and Abatement Order (CAO) No. 01-66 for Dischargers of Aquatic Pesticides to Waters of the United States. The State Water Resources Control Board requested that all of the regions issue CAO's for discharges of aquatic pesticides to waters of the United States in response to a March 12, 2001, decision of the Ninth

Circuit Court of Appeals in the case of Headwaters, Inc. v. Talent Irrigation District.

That decision held that discharges of aquatic pesticides to waters of the United States require coverage under a NPDES permit. The State Board is developing a statewide general permit for this purpose, but that process is expected to take another two to three months. In the interim, the State Board asked the regions to issue the subject CAO, under which aquatic pesticide applicators may apply to the State for coverage.

Aquatic pesticides are typically applied directly into the water column and/or directly to organisms in the water with the intent of killing the aquatic weeds, algae, vectors, or nuisance fish. Many of these organisms are or may be destructive to the beneficial uses of water, including irrigation, navigation, and aquatic life. Vectors constitute a serious threat to human health. Order No. 01-66 covers discharges from the application of aquatic pesticides that are registered for use by DPR, and persons applying these products must be licensed by the Department of Pesticide Regulation, with all use reported to the Agricultural Commissioner. This CAO is expected to be withdrawn once the statewide general permit is in place.

3. Murdock Development Company, Corona Business Park, Corona – At your April 19, 2001 meeting, staff discussed our denial of Clean Water Act Section 401 water quality standards certification for this proposed project. Section 401 certification is a prerequisite to the issuance of a Section 404 permit by the U.S. Army Corps of Engineers. These 404/401 actions are necessary because the project would entail substantial modification of St. Joseph's Wash, which bisects the property. At the April 19th meeting, we indicated that we could not issue a certification for this project because the proposed modification and mitigation were not sufficient to assure the protection of beneficial uses in the Wash, nor were water quality concerns related to the proposed industrial/commercial development at the site adequately addressed.

Joanne Schneider and Kelly Schmoker met with Murdock representatives and consultants (including their engineers and a biologist who was just brought on board) on May 10, 2001. Juan Hernandez with the California Department of Fish & Game was also there. The Army Corps of Engineers representative was unable to attend. We were able to define a solution to modification of St. Joseph's Wash that we and DF&G find acceptable. We are confident that the ACOE will agree. Murdock's engineers are going to draft up the revised plan and submit it to the regulatory agencies to confirm that it accurately reflects our agreement of May 10, 2001.

From a substantive point of view, we believe that this resolves our certification concerns with respect to the project. From a procedural standpoint, given both the Corps and our earlier denials, we assume that Murdock will have to reapply for the 404 permit and 401 certification. Mr. Hernandez indicated that a new Streambed Alteration Agreement would be necessary. We expect that all agencies' actions on these approvals will be expeditious, given that the substantive concerns appeared to be addressed.

4. Toxic Substance Total Maximum Daily Loads (TMDLs) for Newport Bay – At the January 19, 2001 Board meeting, staff presented the “Final Problem Statement for the Total Maximum Daily Load for Toxic Substances in Newport Bay and San Diego Creek”. This document presented data on toxic substances in the Bay and Creek and Board staff’s recommendations that TMDLs be developed for certain of these substances.

As discussed with you at the January 19th meeting, Board staff is working closely with the U.S. Environmental Protection Agency, Region IX (EPA), to complete the toxic substance TMDLs. Pursuant to the terms of a consent decree, EPA is obligated to complete the toxics TMDLs by early 2002, if the Regional Board does not do so. The consent decree specified the toxic constituents for which TMDLs would be completed.

Board and EPA staff met with Defend the Bay, NRDC and their consultants on February 13, 2001 to discuss the problem statement and other matters related to the completion of the toxics TMDLs. EPA recently completed independent analyses of the data and has prepared a “Draft Decision Document for Newport Bay Toxics TMDLs”. This document has been shared with Defend the Bay et al for their technical input. These analyses and the decision document, once finalized, will be used to refine the consent decree list of toxic substances for which TMDLs are required. EPA’s recommendations are generally consistent with those of Board staff.

Per our agreement with EPA, Board staff will focus our TMDL efforts on diazinon, chlorpyrifos and selenium, and EPA will complete the rest. So-called “technical TMDLs” will be completed, at a minimum. These consist of the basic technical elements of a TMDL (including wasteload and load allocations), but do not include implementation plans. If time allows, Board staff will also develop implementation plans. Ultimately, implementation plans must be developed for all the toxic substance TMDLs and the complete “package” must be incorporated in the Basin Plan via a Basin Plan amendment. We expect to bring the diazinon, chlorpyrifos and selenium TMDLs to the Board by the end of the year.

5. State Board Action on Crystal Cove CDO - At its April 26, 2001 meeting, the State Board upheld the Regional Board’s Cease & Desist Order No. 00-87, prohibiting the direct discharge of waste to the Crystal Cove area of the Irvine Coast Area of Special Biological Significance (ASBS). The State Board found that the petition for review, filed by Caltrans, was without merit and therefore denied the petition. However, to allow Caltrans and the State Department of Parks and Recreation sufficient time to prepare and implement plans to address their discharges of waste, a one year extension was granted resulting in a 'plan submittal' due date of May 16, 2002, and a deadline to eliminate the discharges by November 16, 2003.

6. Staff Participation in the 2001 “Children’s Water Education Festival” – Ann Sturdivant, Ed Kashak, Jesse Powell, and Michelle Beckwith of Regional Board staff

participated in the "Children's Water Education Festival" in Irvine on May 1st and 2nd. Board staff's demonstration was entitled "Water Cops On Duty!" The children attending the festival, from grades 2 through 4, learned about protecting groundwater quality by building a model aquifer and pumping groundwater with a miniature "well." During the demonstration, the children added "polluted" water to the aquifer (just food coloring!), and observed how the contamination traveled to their water well. After this activity, the children participated in a quiz contest, where they received prizes to remind them of the important water protection concepts they learned.

This was our staff's fifth year of participation in the Water Festival. Board staff's presentation has been extremely well received by students and teachers every year. This is one of our Region's biggest outreach activities, where Board staff can connect with up to 350 children each day. This year's festival was attended by 5,700 children, from over 200 classes and 26 different cities in the Orange County area. The event is sponsored by the Orange County Water District's Groundwater Guardian Team and the Blue Planet Foundation, in conjunction with participation from private industry, universities, and State and local agencies.

7. Discharge of Citrus Peel Waste by Sunkist, Ontario - In early April 2001, Board staff received two separate reports alleging that citrus peel was being dumped on farm property owned by Sunkist Growers. For years, the Regional Board has regulated Sunkist's discharge of liquid wastes from its Ontario citrus processing plant to this farmland, approximately 300 acres located at the southwestern corner of Edison and Achibald Avenues, Ontario. On April 5, 2001, Board staff investigated the reports and found that some 90,000 cubic feet of wet citrus peel had been dumped in a row approximately 600 feet long, 50 feet wide and 3 feet high, at the Sunkist farm. Liquid leaching from the peel was sampled and found to have high concentrations of total dissolved solids, as well as a pH below the range allowed by the waste discharge requirements the Board adopted for Sunkist. Board staff determined that discharge of this leachate was in violation of Sunkist's requirements.

Board staff then contacted Sunkist, advised them of our findings and conclusions, and requested that the peel be removed as soon as possible. Sunkist complied. At Sunkist's request, Coast Grain and Milling, who purchases the peel from Sunkist for use as an animal feed additive and who had been allowed by Sunkist to temporarily stockpile the peel at its Farm, began to remove the peel on April 24, 2001. Removal of the recoverable peel, i.e., peel that has not been contaminated with dirt, should be completed by May 25, 2001. Board staff has given Sunkist approval to spread the peel that cannot be recovered over approximately 11 acres of their farm.